

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**



**AIR FORCE INSTRUCTION 36-2910**

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**AIR FORCE RESERVE COMMAND**

**Supplement 1**

**6 October 1995**

**Personnel**

**LINE OF DUTY (MISCONDUCT)  
DETERMINATION**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction sets guidelines for Line of Duty and Misconduct Determinations (LODs). It applies to all active duty members as well as members and units of the Air National Guard (ANG) and the USAF Reserve (USAFR). It implements Air Force Policy Directive (AFPD) 36-29, *Military Standards*.

This instruction requires you to collect and maintain information protected by the Privacy Act of 1974. Title 10 U.S.C. 8013 creates this authority. You must show or give a copy of the Privacy Act statement before collecting personal information. System of Records Notice F035 AF MP C, *Military Personnel Records System*, applies. Each form or format subject to Air Force Instruction (AFI) 37-132, *Air Force Privacy Act Program* (formerly Air Force Regulation (AFR) 12-35) and required by this instruction has a Privacy Act Statement, either in the body of the document or in a separate statement accompanying it. The Secretary of the Air Force, or his or her designee, may revise any determination made under this instruction. See [Attachment 1](#) for glossary of references, abbreviations, acronyms, and terms.

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**(AFRC)** This supplement implements and extends the guidance of Air Force Instruction (AFI) 36-2910, 15 August 1994. The AFI is printed word-for-word without editorial review. Air Force Reserve supplementary material is indicated by "" in boldface type. This supplement describes Air Force Reserve procedures to be used in conjunction with the basic instruction. Upon receipt of this integrated supplement discard the Air Force basic.

**SUMMARY OF REVISIONS**

This instruction is the first publication substantially revised from AFR 35-67, 1 March 1988. Note that receiving and approving authorities are now at installation level. Process to completion, according to the

superseded regulation, all AF Forms 348, **Line of Duty Determination**, prepared before receipt of this instruction.

(AFRC) This revision incorporates the procedures formerly in AFR 35-67/AFRES Sup 1, 15 January 1993, and aligns our supplement with current instructions within AFI 36-2910.

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## Chapter 1

### PROGRAM ELEMENTS

**1.1. Who Uses Line of Duty (LOD) Determinations.** Federal law requires a LOD determination for certain diseases, injuries, or death suffered by military members while in the LOD status, or are the result of the member's own misconduct.

1.1.1. The Air Force uses this information to determine:

1.1.1.1. Eligibility for physical disability retirement or separation (Title 10 U.S.C., Sections 1201-1221).

1.1.1.2. Lost time (Title 10 U.S.C., Section 972(5)).

1.1.1.3. Forfeiture of pay when absent from duty due to disease caused by intemperate use of alcohol or habit forming drugs (Title 37 U.S.C., Section 802).

1.1.1.4. Eligibility of certain members of the United States Air Force Reserve (USAFR) and of the Air National Guard of the United States (ANGUS) for medical care as well as pay and allowances (Title 10 U.S.C., Section 1074a, and Title 37 U.S.C., Sections 204(g), 204(h)).

1.1.1.5. Eligibility for the surviving dependents, of a deceased active duty person, to continue occupancy in military family housing for up to 90 days after the member's death, or continued payment of the deceased's quarters allowance for up to 90 days following death (Title 37 U.S.C., Section 403(l)).

1.1.2. The Department of Veterans' Affairs uses the findings to determine eligibility for disability compensation and hospitalization benefits (Title 38 U.S.C., Sections 1110, 1131, 1710, and 1712).

1.1.3. The Office of Personnel Management uses the findings to determine eligibility for Civil Service preference (Title 5 U.S.C., Sections 2108 and 3309-3315).

1.1.4. The Department of Labor uses the findings to determine the eligibility of an Air Force Reserve Officer Training Corps (AFROTC) cadet for compensation for injuries sustained while training (Title 5 U.S.C., Section 8140).

### 1.2. Who Needs A LOD Determination:

1.2.1. Members of the Air Force (Regular or Reserve) who incur or aggravate an injury, illness, disease, or who die leaving dependents while on active duty or traveling to or from such duty.

1.2.2. Members of the USAFR and the ANGUS who incur or aggravate an injury, illness, or disease while:

1.2.2.1. Performing active duty for training for any period of time, or while on inactive duty training.

1.2.2.2. Traveling directly to or from the place the member performs active duty, or active duty for training for more than 30 days.

1.2.2.3. Traveling directly to or from the place the member will perform, or performed active duty or inactive duty training for 30 days or less, or who;

1.2.2.4. Die on active duty while serving under conditions that make them eligible to receive basic allowance for quarters (BAQ) with either a variable housing allowance (VHA) or an overseas housing allowance (OHA) and who leave surviving dependents qualifying for benefits under Title 37 U.S.C., Section 403(l).

**1.2.2.5. (Added-AFRC)** Do not initiate a line of duty determination for members who incurred an injury, illness, or disease on active duty prior to entering the Reserve.

1.2.3. AFROTC cadets injured while flying or while in flight instruction, or injured while traveling to or from, or attending, field training under Title 10 U.S.C., Chapter 103. Consider AFROTC cadets who get a disease or illness that is the proximate result of the performance of the training specified above as injured during the period (Title 5 U.S.C., Section 8140).

1.2.4. Cadets of the United States Air Force Academy (USAFA).

1.2.5. Military members of the other United States Armed Forces attached or assigned to an Air Force unit. This includes those treated at an Air Force medical facility.

**1.3. When to Make a Determination.** Make an LOD determination (see paragraph [A2.4.](#)) when a member, whether hospitalized or not, has a disease or injury that results in:

1.3.1. The inability to do military duties for more than 24 hours.

**1.3.1. (AFRC)** Not applicable for members of USAFR.

1.3.2. The likelihood of a permanent disability.

1.3.3. Death, when there are surviving dependents (See paragraph [1.5.](#)).

1.3.4. Medical treatment for reserve members regardless of the ability to perform military duties.

#### **1.4. Who Makes LOD Determinations:**

1.4.1. Medical Officers, Immediate Commanders, Appointing Authorities, Reviewing Authorities, Approving Authorities, and the Secretary of the Air Force make LOD and misconduct determinations ( [Table 3.4.](#), [Table 3.5.](#), [Table 4.1.](#), and [Table 4.2.](#)). [Attachment 2](#) shows who makes LOD determinations for specific cases.

#### **1.5. How Death Affects LOD Determinations:**

1.5.1. Conduct an LOD and misconduct determination only under the conditions described in paragraph [1.2.2.4.](#)

1.5.2. Conduct LOD and misconduct determinations separately from the processing of death cases under AFI 36-3002, *Casualty Services* (formerly AFR 30-25).

1.5.2.1. If a member with qualifying dependents dies while an LOD and misconduct determination is in progress, continue processing for a final LOD determination.

1.5.2.2. If a member without qualifying dependents dies while the LOD and misconduct determination is in progress, stop the LOD and process the case under AFI 36-3002 (formerly AFR 30-25).

#### **1.6. Effects of Existed Prior to Service (EPTS) Disease or Injury.**

1.6.1. EPTS diseases or injuries do not apply to LOD. See EPTS in [Attachment 1](#), Terms.

**1.6.1.1. (Added-AFRC)** Reserve Medical Units (RMU) determine whether the disease, illness, or injury existed before the start of the member's tour of duty. A clear distinction between the symptoms and the actual medical condition causing the symptoms is crucial in making an existing prior to service (EPTS) determination. An LOD determination is based upon the onset of the disease, illness, or injury process, not the existence of symptoms. EPTS conditions include chronic diseases, illnesses, injuries, and illnesses or diseases with an incubating period that would rule out a finding that they were incurred during a unit training assembly (UTA), active duty for training (ADT), or tour of active duty. If the medical condition is EPTS, the next consideration is whether or not it was aggravated by military service. If it was, an AF Form 348, Line of Duty Determination, is accomplished. If not, an administrative LOD determination is appropriate with the determination "EPTS-LOD not applicable."

## **1.7. Need for Prompt and Accurate Action:**

1.7.1. Complete LODs before determining a member's eligibility for benefits, including incapacitation pay for reserve members. Delay separation or retirement processing if the results of an LOD are not known.

## Chapter 2

### THE LOD (MISCONDUCT) DETERMINATION

#### 2.1. LOD Determinations Following Disease, Injury, or Death of a Member Leaving Surviving Dependents:

2.1.1. LOD determination authorities (paragraph 1.4.) assume a member's disease, injury, or death is in line of duty and not due to misconduct unless the preponderance of the evidence shows that the disease, injury, or death:

- 2.1.1.1. Was proximately caused by the member's own misconduct; or
- 2.1.1.2. Occurred while the member was absent without authority.

#### 2.2. Types of LODs and Who Makes Determination.

2.2.1. See [Attachment 2](#) to determine who makes LOD determinations and when to use each of the LODs.

#### 2.3. Required Evidence for LOD (see [Attachment 4](#) and [Attachment 5](#)).

2.3.1. The appropriate authority ([Attachment 2](#)) makes LOD and misconduct determinations on the basis of all available evidence considering:

- 2.3.1.1. Direct evidence, i.e., actual knowledge or observation of witnesses;
- 2.3.1.2. Indirect evidence, i.e., facts or statements drawn from reasonable inferences, deductions, and conclusions.
  - 2.3.1.2.1. Do not make a distinction between the relative value of direct and indirect evidence.
- 2.3.1.3. Witnesses behavior, opportunity for knowledge, information possessed, ability to recall and relate events, and relationship to the matter.
  - 2.3.1.3.1. Do not make a correlation between the weight (preponderance) of the evidence and the number of witnesses or exhibits.
- 2.3.1.4. Other signs of truth.

#### 2.4. Four Possible Findings.

2.4.1. See [Attachment 6](#) for examples and discussion of: In Line of Duty; EPTS, LOD Not Applicable; Not in Line of Duty, Not Due to Own Misconduct; Not in Line of Duty, Due to Own Misconduct.



## Chapter 3

### PROCESSING ADMINISTRATIVE AND INFORMAL LOD (MISCONDUCT) DETERMINATIONS

**3.1. Medical Facility Instructions.** Each medical facility commander appoints a Line of Duty Medical Focal Point (LOD-MFP). In addition, each medical officer assigned to the medical facility that first provides treatment or is nearest to the non-Air Force facility that first gives treatment:

3.1.1. Identifies cases requiring LOD and misconduct determinations.

3.1.2. Advises the commander of the need for an LOD for members of another service, first treated at the Air Force medical facility.

3.1.2.1. The parent service processes the determination.

**3.1.2.1. (AFRC)** For clarification purposes, AF Form 348 for USAFR unit assigned personnel is processed through the respective servicing medical unit (SMU). The SMU is the reserve medical unit responsible for assisting a reservist in receiving military medical care (normally reserve medical unit where member is assigned). For USAFR members who are TDY at another base, regardless of length of tour, the SMU initiates/processes the AF Form 348 and forwards it to the respective reserve career enhancement section (MPF/DPMPE). Member's SMU initiates LOD determinations when occurrences transpire away from home station and no line of duty determination was made. When the SMU authorizes the member to be treated at a non-military facility the SMU is responsible for initiation of AF Form 348.

3.1.3. Processes LODs (no death) as outlined in [Table 3.1](#).

3.1.3.1. The LOD-MFP completes three copies of AF Form 348, **Line of Duty Determinations**, ensures the appropriate medical officer signs it, and distributes the AF Form 348 as follows:

3.1.3.1.1. Send the original to the MPF Special Actions Office (MSPPA) serving the member's immediate commander.

**3.1.3.1.1. (AFRC)** For USAFR unit assigned personnel, the AF Form 348 is sent to the respective reserve military personnel flight/career enhancement section (MPF/DPMPE).

3.1.3.1.2. File one copy in the member's medical record. For inpatients, file the copy in the member's inpatient record. For outpatients, or if treated at another treatment facility, file the copy in the member's outpatient record.

3.1.3.1.3. File one copy in the LOD-MFP Office.

3.1.4. Processes LODs in Death Cases When Member Has Surviving Dependents:

3.1.4.1. The LOD-MFP contacts the supporting MPF to determine if the deceased has surviving dependents who qualify for benefits under Title 37 U.S.C., Section 403(1). (See paragraph [1.2.2.4](#).)

3.1.4.1.1. Dependents eligible for military medical care usually qualify as beneficiaries under Title 37 U.S.C., Section 403(1). Contact the immediate commander, the casualty assistance representative (CAR) at the MPF Personal Affairs Office (MSPAP), and review information

from the Defense Enrollment Eligibility Reporting System (DEERS), or other automated systems, to clarify the status of the deceased's surviving dependents.

3.1.4.2. The medical officer initiates an LOD and misconduct determination when there are surviving dependents. He or she enters an administrative determination of "in line of duty" in the deceased's medical records if death is the result of a cause listed in paragraph [A2.1](#). Complete an AF Form 348 for Reserve members covered by paragraph [A2.2.2](#).

3.1.4.3. For cases not resolved by an administrative determination, the medical officer completes the AF Form 348 and distributes them as follows: the original to the MPF/MSPPA that serves the immediate commander; a copy in the deceased's medical records; a copy to the LOD-MFP and a copy to the CAR, MPF/MSPPA.

3.1.5. Acts on the staff judge advocate (SJA) recommendation (paragraph [3.4.3](#)) to change LOD from informal to administrative and processes as an administrative determination, destroys the AF Form 348, or, in case of disagreement with the SJA, sends the AF Form 348 to the appointing authority through MPF/MSPPA, and the SJA, for a determination.

**3.1.5. (AFRC)** Only applicable if SJA believes administrative determination of EPTS is advisable. Not applicable for members of USAFR when there is reason to believe that the member is entitled to incapacitation pay. Administrative LODs are not acceptable when applying for incapacitation pay entitlement.

**3.1.6. (Added-AFRC)** Upon initiation of an LOD determination, the reserve medical unit counsels members (in person or by certified mail) on member's responsibilities while receiving military medical care and provides the member with a copy of the medical briefing contained in AFI 36-3023, *Incapacitation Pay*. A copy of the medical briefing is forwarded to the appropriate reserve MPF/DPMPE.

### 3.2. MPF Instructions:

3.2.1. The MPF/MSPPA that serves the member's immediate commander ensures he or she accomplishes the LOD and misconduct determinations as outlined in this instruction. The MPF/MSPPA: acts on behalf of the appointing authority; monitors the progress of the determination and sets up controls and suspenses; sends the AF Form 348 to the immediate commander; and ensures the responsible officials complete the actions on time ([Table 3.2](#). and [Table 3.3](#).).

**3.2.2. (Added-AFRC)** Stringent controls must be established to ensure that LOD (Misconduct) determinations are processed expeditiously. Upon receipt of finalized AF Form 348 or DD Form 261, **Report of Investigation Line of Duty and Misconduct Status**, reserve MPF/DPMPE advises the member of entitlements which are available and, if eligible, how to apply for them. Career enhancement counsels the member (in person or by certified mail) on entitlements and gives the member a copy of the briefing contained in AFI 36-3203. A member-signed copy is retained by the reserve MPF/DPMPE and retained in the member's case file along with a copy of medical and pay briefings.

**3.3. Commander Instructions.** Use [Table 3.4](#). to determine the immediate commander who acts on the AF Form 348.

3.3.1. Investigates the circumstances of the case.

3.3.2. Completes the applicable portion on the back of AF Form 348. (See [Attachment 7](#).)

3.3.3. Finalizes the findings of "in line of duty" for members whose strength accountability is with the active duty force. Do this only when SJA concurs in the finding, and then forward the AF Form 348 through the SJA to MPF/MSPPA for final processing.

3.3.4. Sends the AF Form 348 to the appointing authority through the servicing SJA if the finding is not "in line of duty" or if the SJA does not agree with the "in line of duty" finding.

**3.3.5. (Added-AFRC)** The member's reserve unit commander is required to issue travel orders for all medical appointments. The member is not placed on active duty orders for the sole purpose of hospitalization and/or medical care or appointments.

### **3.4. Staff Judge Advocate (SJA) Instructions:**

3.4.1. Sends the AF Form 348 to MPF/MSPPA when you agree with the "in line of duty" finding.

**3.4.1. (AFRC)** For USAFR unit assigned members, the AF Form 348 is forwarded to respective reserve MPF/DPMPE.

3.4.2. Sends the AF Form 348 back to the commander when you disagree with the finding.

3.4.3. Returns the AF Form 348, through MPF/MSPPA, to the LOD-MFP when you believe an administrative determination is more appropriate. (See paragraph [3.1.5](#).)

**3.4.3. (AFRC)** Only applicable if SJA believes administrative determination of EPTS is advisable. Not applicable for members of USAFR when there is reason to believe that the member is entitled to incapacitation pay. Administrative LODs are not acceptable when applying for incapacitation pay entitlement.

### **3.5. Appointing Authority Instructions.** Use [Table 3.5](#) to determine the appointing authority.

3.5.1. Reviews the AF Form 348.

3.5.2. Considers the recommendations of the LOD-MFP, the immediate commander, and the SJA.

3.5.3. Closes the case (administratively or informally) with an "in line of duty finding".

**3.5.3. (AFRC)** For USAFR members, the case is only closed informally with an "in line of duty finding" when there is reason to believe that the member is entitled to incapacitation pay. Administrative LODs are not acceptable when applying for incapacitation pay entitlement.

3.5.3.1. Sends the AF Form 348 back to the LOD-MFP for cases administratively closed.

3.5.3.2. Checks and signs the appropriate block in AF Form 348, item 21 for approved informal "in line of duty" findings. Send the AF Form 348 to MPF/MSPPA or;

**3.5.3.2. (AFRC)** Send AF Form 348 to respective reserve MPF/DPMPE.

3.5.4. Appoints an investigative officer. See paragraph [4.1](#) and [Attachment 8](#).

3.5.4.1. Checks and signs the appropriate block in AF Form 348, item 21.

3.5.4.2. Gives the investigating officer copies of the appointing order, the original AF Form 348, and a copy of this instruction.

3.5.4.3. Directs the investigating officer to see the staff judge advocate.

3.5.4.4. Sends copies of the appointing order to MPF/ MSPPA and to the custodian of the member's health records for filing.

**3.5.4.4. (AFRC)** Send copies of the appointing order to respective reserve MPF/DPMPE.

3.5.4.5. Sets up typing and administrative support for the investigating officer.

**3.5.4.6. (Added-AFRC)** For AFRC units, the appointing authority may make a determination of "EPTS-LOD not applicable" on AF Form 348 without a formal investigation being accomplished even though the findings of the immediate commander were "in line of duty." Include the following in section 22 of AF Form 348, after item c: "d. EPTS-LOD not applicable." When the appointing authority makes a determination of "EPTS-LOD not applicable" the AF Form 348 is closed without further investigation.

**3.6. MPF/MSPPA Instructions.** Distributes AF Forms 348 when the appointing authority agrees with or directs an "in line of duty" finding:

3.6.1. Send the original to Air Force Military Personnel Center, Micrographics Systems Branch (HQ AFMPC/ DPMDOM1), 550 C Street West, Suite 21, Randolph AFB TX 78150-4723 when strength accountability is with the active duty force.

**3.6.1. (AFRC)** Not applicable to USAFR members.

3.6.2. For USAFR members whose strength accountability is with the AFRES unit:

3.6.2.1. Forward the original to HQ ARPC/DSMMA1, 6760 E. Irvington Pl, Denver CO 80280-5000, for filing in member's master personnel records group (MPerRGp) for cases involving a clearly duty-related injury not involving misconduct during an AT or a UTA (after sign-in and before sign-out), or

3.6.2.2. Forward the original to HQ AFRES/DPAA, Robins AFB GA 31098-6001, for review of cases involving questionable circumstances. This includes, but is not limited to, misconduct, alcohol or drug intoxication, travel to or from UTAs, athletic events before or after UTA periods, disease incurred during UTAs, or an active duty tour of less than 30 days, and on-base injuries occurring before or after UTA periods.

**3.6.2.2. (AFRC)** This also includes cases involving EPTS medical conditions that involve service aggravation; medical conditions involving disease processes (that is, coronary artery disease, cancer, diabetes mellitus, etc.); all cardiac conditions (that is heart attacks, rhythm disturbances, etc.). LODs being reviewed under this paragraph are not considered finalized until approved by HQ AFRC. Attach the following documents to all AF Forms 348 requiring HQ AFRC review: supporting medical documentation; order or document verifying member's status; police accident report, map showing the point of origin, point of accident, and destination for injuries received while traveling to or from a tour of AD, UTA, AFTP, AT, etc. A finalized copy of AF Form 348 together with HQ AFRC approval/transmittal memorandum is sent to the SMU for filing in member's medical records.

3.6.2.2.1. The AFRES Commander (AFRES/CC) or the AFRES Vice Commander (AFRES/CV) may return the form to the appointing authority with directions to conduct a formal investigation.

**3.6.2.2.1. (AFRC)** Assistant Vice Commander (AFRC/CVC) or the Director of Personnel (HQ AFRC/DP) NOTE: Upon review of additional medical documentation and advice of HQ AFRC/SG, the reviewing authority may make a determination of "EPTS-LOD not applicable" without directing that a formal investigation be conducted. TYPES OF LODs, WHO MAKES DETERMINATIONS, AND HOW TO RECORD THEM Not applicable to USAFR members when there is reason to believe that the member is entitled to incapacitation pay. Administrative LODs are not acceptable when applying for incapacitation pay entitlement.

3.6.3. For ANGUS members whose strength accountability is with an ANGUS unit:

3.6.3.1. Forward the original and two locally reproduced copies to the State Adjutant General of the member's home state for review.

3.6.3.1.1. The State Adjutant General reviews and sends all copies to the Air Surgeon, National Guard Bureau, for further review.

3.6.3.1.2. The Air Surgeon, National Guard Bureau, keeps one copy and returns the original and remaining copy to the State Adjutant General for disposition as follows: sends a copy to MPF/MSPPA to administer the member's medical and pay benefits; and sends the original to HQ ARPC/DSMMA1 for filing in the members' MPerRGp. (See paragraph [3.6.2.1.](#))

3.6.4. For AFROTC cadets, forward the original to the cadet's detachment commander for filing in the cadet's personnel record.

3.6.5. For USAFA cadets, forwards the original to HQ USAFA, Directorate of Cadet Personnel (DPY), USAF Academy CO 80840-5001.

3.6.6. For all other non-EAD USAFR members, send the original and two copies to HQ ARPC/MSPPP, 6760 E. Irvington Pl, Denver CO 80280-5000, for distribution. File the original in the member's outpatient medical records. Send copies to 2400th RRMS, OLUW/FMPQ-P, Robins AFB GA 31098-1635, for continuation pay purposes and to HQ ARPC/DSMO for filing in the member's MPerRGp.

3.6.7. When the appointing authority agrees with or directs an "in line of duty" finding in a death case with surviving dependents, send the original AF Form 348 to AFMPC Micrographics Systems Branch, Records Retirement Section (AFMPC/DPMDOM2F), 550 C Street West, Suite 21, Randolph AFB TX 78150-4723, one copy to DFAS-DE/FYCC, 6760 E. Irvington Pl., Denver CO 80279-7000, and one copy to the CAR, MPF/MSPPA. If the dependents reside in military family housing at the time of death, send a copy to the military family housing manager (DEH) where the dependents live.

**Table 3.1. Medical Officer or Medical Facility Requirements For Administrative Determinations.**

<b>R U L E</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
		<b>then the medical officer or medical facility</b>			
	<b>If the disease, injury, or death of a member leaving surviving dependents (See note 1.) is</b>	<b>in death cases, makes an "in line of duty" determination, and puts that entry in the member's medical record</b>	<b>in non-death cases, makes an "in line of duty" determination but does not put an entry in the member's medical record</b>	<b>makes an "EPTS, LOD Not Applicable" entry in member's medical record</b>	<b>initiates AF Form 348</b>
<b>1</b>	characterized as a hostile casualty (see atch 1, Sec C--Terms and A7.1)	X (see notes 1 and 2)	X (see note 3)		
<b>2</b>	an injury or death incurred as a passenger in a common carrier or military aircraft (see A7.1.2)	X (see notes 1 and 2)	X (see note 3)		
<b>3</b>	a disease or death of natural origin not involving misconduct and not caused by drug or alcohol abuse	X (see notes 1 and 2)	X (see note 3)		
<b>4</b>	a simple injury (sprain, contusion, or minor fracture) not likely to result in a permanent disability (see A7.1.3.2)		X (see notes 3 and 4)		
<b>5</b>	EPTS and not aggravated by service (see para 1.6. and A7.1.4)			X	
<b>6</b>	any other illness or injury				(see note 5)

**NOTES:**

1. Make LOD determinations only in death cases involving members who leave surviving dependents. Refer to paragraphs **1.5.1.** and **3.1.4.** for further explanation.
2. Make an entry to provide documented basis upon which to award additional housing benefits under Title 37 U.S.C., Section 403(l) to surviving dependents.
3. Make an entry for USAFR members to provide documentation for medical care and pay.
4. Only if not due to the member's misconduct, was not incurred while the member was absent without authority and none of the conditions required for NLOD/NDOM apply, see atch 1, Terms.

5. Refer to [Attachment 2](#) on how to fill out AF Form 348. Refer to paragraph [3.1.4.3.](#) for distribution instructions.

**Table 3.2. Document Flow and Time Standards For Informal LOD (Misconduct) Determinations.**

S T E P	A	B	C	D	E	F
	Action agency	Identified in paragraph	Takes action required by paragraph	Distribution per paragraph	With action (except in death cases) completed within (See note 1.)	With action in death cases completed within (See note 1.)
1	Air Force medical facility or officer	<a href="#">3.1.</a>	<a href="#">3.1.3.</a> or <a href="#">3.1.4.</a> and <a href="#">Table 3.1.</a> rule 6	<a href="#">3.1.3.1.</a> or <a href="#">3.1.4.3.</a>	4 workdays	2 workdays
2	MPF/MSPPA	<a href="#">3.2.1.</a>	<a href="#">3.2.1.</a>	3.2.1.3	2 workdays	1 workdays
3	Immediate commander	<a href="#">3.3.</a>	<a href="#">3.3.1.</a>	<a href="#">3.3.3.</a> or <a href="#">3.3.4.</a>	4 workdays	2 workdays
4	Staff judge advocate (See note 2)	<a href="#">3.4.</a>	<a href="#">3.4.</a>	<a href="#">3.4.</a>	2 workdays	1 workdays
5	Appointing authority	<a href="#">3.5.</a> (see also <a href="#">Table 3.5.</a> )	<a href="#">3.5.</a>	<a href="#">3.5.3.1.</a> or <a href="#">3.5.3.2.</a>	3 workdays	
6	MPF/MSPPA	<a href="#">3.2.1.</a>	<a href="#">3.6.</a>	<a href="#">3.6.</a>	1 workdays	

**NOTES:**

1. These time standards don't apply to USAFR member determinations being processed through USAFR channels. However, USAFR action agencies will complete the actions indicated in the table as soon as possible (ASAP).
2. If appointing an investigating officer, go to [Table 3.3.](#), step 1.

**Table 3.3. Document Flow and Time Standards For Formal LOD (Misconduct) Determinations.**

S T E P	A	B	C	D	E	F
	Action agency	Identified in paragraph	Takes action required by paragraph	Distributes per paragraph	With action (except in death cases) completed within (See note 1.)	With action in death cases completed within (See note 1.)
1	Appointing authority	<a href="#">3.5.</a> (see also <a href="#">Table 3.5.</a> )	<a href="#">3.5.4.</a>	<a href="#">3.5.4.2.</a> and <a href="#">3.5.4.4.</a> (See note 2)	3 workdays	2 workdays
2	Investigating officer	<a href="#">3.5.4.</a>	<a href="#">4.1.</a>	<a href="#">4.1.2.</a>	14 workdays	7 workdays



STEP	A	B	C	D	E	F
	Action agency	Identified in paragraph	Takes action required by paragraph	Distributes per paragraph	With action (except in death cases) completed within (See note 1.)	With action in death cases completed within (See note 1.)
3	Staff judge advocate	3.4.	4.2.	4.2.2.	5 workdays	2 workdays
4	Appointing authority	3.5. (see also Table 3.5.)	4.3.	4.3.2.		ASAP
5	Review authority	4.4. (see also Table 4.1.)	4.4.	4.4.5.		ASAP
6	Approving authority	4.5. (see also Table 4.2.)	4.5.	4.5.4.		ASAP
7	MPF/MSPPA	4.6.	4.6.	4.6.	ASAP	ASAP

**NOTES:**

1. These time standards don't apply to USAFR member determinations being processed through USAFR channels. However, USAFR action agencies will complete the actions indicated in table ASAP.
2. If final finding directed by the appointing authority was "in line of duty," go to Table 3.2., step 5.

**Table 3.4. Determining Immediate Commanders for LODs.**

RULE	A	B
	Members and Unit of Assignment	Who Takes Action
1	All members assigned for strength accounting-purposes to AD units and all ANG members	Commander at lowest level unit member is assigned to at the time the AF Form 348 is initiated.
2	USAFR members assigned to and training with-AFRES units	Commander of AFRES unit of assignment or Appointing Authority ( Table 3.5.).
3	USAFR members (IMA's) not on EAD but attached to an AD unit for training	AD unit commander.
4	IMA's attached to ANGUS, other branches of US Armed Services, or other federal agency	Host installation commander of IMA's unit of attachment.
5	AFROTC cadets in flight training	AFROTC commander at flying training site.
6	AFROTC cadets in field training	Installation commander (SPCM) hosting field training.
7	AFROTC cadets in all other cases	AFROTC Detachment commander.



**Table 3.5. Determining Appointing Authority for LODs (See notes 1, 2 and 3).**

<b>R U L E</b>	<b>A</b>	<b>B</b>
	<b>Members and Unit of Assignment</b>	<b>Who Acts as Appointing Authority</b>
<b>1</b>	All members assigned for strength accounting purposes to AD units. Also includes IMAs and AFROTC cadets	Group commander in the chain of command over the immediate commander.
<b>2</b>	USAFR members assigned and training with an AFRES unit	Senior AFRES commander present.
<b>3</b>	ANGUS members assigned to an ANGUS unit who are serving or training in the member's home state	Senior ANGUS commander present.
<b>4</b>	ANGUS members assigned to an ANGUS unit who are serving or training outside the member's home state	The Adjutant General of the member's home state.

**NOTES:**

1. When the appointing authority serves as reviewing authority, he or she must delegate the authority to act as appointing authority to a staff member who is in the grade of colonel or higher. Make this delegation by supplementing this instruction. The same officer cannot act on the same case as both appointing authority and reviewing authority.
2. An appointing authority can be the member's immediate commander.
3. Support group commanders will act as appointing authorities for tenant units below group level.

## Chapter 4

### PROCESSING FORMAL LOD (MISCONDUCT) DETERMINATIONS

#### 4.1. Investigating Officer Instructions:

- 4.1.1. Complies with [Attachment 3](#) and [Attachment 4](#) and reviews [Attachment 5](#).
- 4.1.2. Sends the complete report of investigation to the staff judge advocate who supports the appointing authority.

#### 4.2. Staff Judge Advocate Instructions:

- 4.2.1. Formally reviews each investigation report for legal sufficiency. Returns the report for additional investigation if needed. Attaches a copy of the review to each copy of the investigation report.
- 4.2.2. Sends the complete report of investigation to the appointing authority for action.

#### 4.3. Appointing Authority Instructions:

- 4.3.1. Reviews the report, agrees or disagrees with the investigating officer findings, then completes and signs all copies of DD Form 261, **Report of Investigation Line of Duty and Misconduct Status**, or returns the report for additional investigation. If you disagree with the findings of the investigating officer, list the reasons therefor and the new findings on the reverse of all copies of DD Form 261 and sign them.
- 4.3.2. Sends all documentation to the reviewing authority through MPF/MSPPA, except:
  - 4.3.2.1. Process investigations directed due to disagreements between the immediate commander and the SJA (paragraph [3.3.4.](#)), that result in an "in line of duty" determination, according to paragraph [3.5.3.](#)

#### 4.4. Reviewing Authority Instructions. Use [Table 4.1.](#) to determine the reviewing authority.

- 4.4.1. Insures the staff judge advocate reviews the report of investigation.
- 4.4.2. Completes all copies of the DD Form 261.
- 4.4.3. Signs and provides new findings and reasons on the reverse of all copies of DD Form 261 if the appointing authority disapproves the action/recommendation. **NOTE:** Base approval or disapproval on the preceding finding. For example, if the appointing authority disapproves the "in line of duty" finding of the investigating officer, the reviewing and approving authority approves or disapproves the action of the appointing authority, not the investigating officer.
- 4.4.4. States "reviewing authority is also the approving authority" in the blank space at the bottom of DD Form 261 when the reviewing authority acts as the approving authority.
- 4.4.5. Annotates the blank space at the bottom of the front of DD Form 261 when the approving authority is the only officer exercising special court-martial jurisdiction and acts both as reviewing and as approving authority.
- 4.4.6. Distributes the documentation as follows:

4.4.6.1. Send all documentation to the approving authority; or

4.4.6.2. Return all documentation except the original DD Form 261, the original report of investigation, and the original reviews to the MPF/MSPPA that serves the member's immediate commander. Do this when the reviewing authority is also the approving authority. Distribute the originals as follows (for death cases, see paragraph 4.5.5.):

4.4.6.2.1. For members whose strength accountability is with the active duty force--to AFMPC Staff Judge Advocate (JA), 550 C Street West, Suite 44, Randolph AFB TX 78150-4746, for review and file in the master personnel record.

4.4.6.2.1.1. HQ AFMPC/JA may return the case to the approving authority for corrective action and/or may submit the case to the Secretary of the Air Force Personnel Council with a recommendation to change an approved determination.

4.4.6.2.2. For USAFR members whose strength accountability is with a USAFR unit--to HQ ARPC/DSMA, 6760 E. Irvington Pl. #4000, Denver CO 80280-4000, for filing in the member's MPerRGp.

4.4.6.2.3. For ANGUS members whose strength accountability is with an ANGUS unit--see paragraph 4.5.4.1.

4.4.6.2.4. For AFROTC cadets--to the cadet's detachment commander for filing in the cadet's personnel record.

4.4.6.2.5. For USAFA cadets--to HQ USAFA/DPY, USAF Academy CO 80840-5001.

4.4.6.2.6. For IMAs and all other non-EAD USAFR members, send the original AF Form 348 to HQ ARPC/MSPPP, 6760 E. Irvington Pl. #3800, Denver CO 80280-3800, for distribution.

**4.5. Approving Authority Instructions.** Use Table 4.2. to determine the approving authority. The approving authority takes final action on the case, and:

4.5.1. Records the action approving the findings of the reviewing authority. Do this in the blank space at the bottom of the front of all copies of DD Form 261 and sign all copies; or

4.5.2. Returns the report to the appointing authority for additional investigation; or

4.5.3. Disapproves the findings of the reviewing authority, stating the reasons for disapproval. Enters the new findings on the reverse of all copies of DD Form 261, and signs them.

4.5.4. Disposes of documentation outlined in paragraph 4.4.6.2., except

4.5.4.1. For ANGUS members covered by paragraph A12.1.2:

4.5.4.1.1. Sends two copies to the MPF/MSPPA that serves the member's immediate commander.

4.5.4.1.2. Sends the original to HQ ARPC/MSPAR (PAS 96 IMAs) or HQ ARPC/DSM (PAS S7) for filing in the member's MPerRGp in the case of commissioned officers; or

4.5.4.1.3. Files the original in the member's MPerRGp in the case of all other members.

4.5.5. For death cases the approving authority:

4.5.5.1. Returns copies of all documentation to the MPF/MSPPA that serves the member's immediate commander.

4.5.5.2. Sends the original DD Form 261, the original report of investigation, and original reviews to AFMPC/JA, 550 C Street West, Suite 44, Randolph AFB TX 78150-4746, for review and file in the MPerRGp.

4.5.5.3. Sends a copy of the DD Form 261, the report of investigation, and reviews to the CAR, MPF/MSPPA.

#### 4.6. MPF/MSPPA Instructions:

4.6.1. Advises the Accounting and Finance office if the file shows an absence from duty for more than 1 day due to disease directly caused by and immediately following the member's intemperate use of alcohol or habit forming drugs. (See Title 37 U.S.C., Section 802, and DODPM paragraph 10315 and table 1.3.2)

4.6.2. Ensures that the member's unit accomplishes AF Form 2098, **Duty Status Change**, to show lost time if the final finding is "Not In Line of Duty." (See Title 10 U.S.C., Section 972(5).) Keep the documentation in a suspense file until a determination is made.

4.6.3. Gives a copy of DD Form 261, the report of investigation, and all reviews to the subject of the investigation. Do this after complying with paragraphs **4.6.1.** and **4.6.2.** **NOTE:** Keep a copy for local use to administer the member's medical and pay benefits if the subject is an ANGUS member whose strength accountability is with an ANGUS unit.

4.6.4. In death cases:

4.6.4.1. Sends a copy of the DD Form 261, the report of investigation, and reviews to DFAS-DE/FYCC, 6760 E. Irvington Pl, Denver CO 80279-7000. Comply with paragraph 4.5.6, unless the approved findings are "not in line of duty." In this case:

4.6.4.1.1. Forward a copy of the DD Form 261, the report of investigation, and the review or reviews to the surviving next of kin, usually the surviving spouse. **EXCEPTION:** If the surviving next of kin is a minor, forward a copy of the report to the legal guardian appointed to represent the minors' interests. Do not send copies of the report directly to surviving minor children. Contact the summary court-martial appointed to settle the deceased's affairs and obtain the guardian's name and address.

4.6.4.1.2. Send the copy under a cover letter to the next of kin or legal guardian. Prepare the cover letter for signature by the installation commander or designee. Hand deliver the letter if possible; otherwise, use certified mail and request return receipt. Use **Attachment 9** for the content of the cover letter.

4.6.4.1.3. Forward a copy of the cover letter to the CAR, MPF/MSPAP and the military family housing manager (DEH) at the installation where the dependents reside.

**Table 4.1. Determining Reviewing Authority For LODs (See Notes 1 and 2).**

<b>R U L E</b>	<b>A</b>	<b>B</b>
	<b>Member and Unit of Assignment</b>	<b>Who acts as Reviewing Authority</b>
<b>1</b>	All members assigned for strength accounting purposes to AD units. Also individual AFROTC cadets	The next immediate commander in the chain of command over the appointing authority.
<b>2</b>	All USAFR members, including IMAs, not covered by Rule 1	ARPC/CC or CV.
<b>3</b>	ANGUS members assigned to an ANGUS unit who are serving or training in the member's home state	The state Adjutant General of the member's home state.
<b>4</b>	ANGUS members assigned to an ANGUS unit who are serving or training outside the member's home state	The Air Surgeon, National Guard Bureau.
<b>5</b>	For all AFROTC cadets	The Commandant, AFROTC.

**NOTES:**

1. Reviewing authority may not act as appointing authority.
2. The reviewing authority may delegate responsibility to any officer on his or her staff in the grade of colonel or SJA.

**Table 4.2. Determining Approval Authority for LODs (See note).**

<b>R U L E</b>	<b>A</b>	<b>B</b>
	<b>Members of Unit of Assignment</b>	<b>Who Acts as Approving Authority</b>
<b>1</b>	All members assigned for strength accounting purposes to AD unit and all AFROTC cadets	Officers who exercise special court-martial (SPCM) jurisdiction over the reviewing authority.
<b>2</b>	USAFR members whose strength accountability is with an AFRES Unit, including IMAs	AFRES/CC or CV.
<b>3</b>	ANGUS members whose strength accountability is with an ANGUS Unit	The Air Surgeon, National Guard Bureau.

**NOTE.** Reviewing authority can act as approving authority if SPCM.

## Chapter 5

### REINVESTIGATION OF FINAL FINDINGS

**5.1. Who Directs a Reinvestigation:** The appointing authority or higher authority, including HQ AFMPC/JA, may direct a reinvestigation. Do this when new or significant evidence shows the chance of any error in a final LOD and misconduct determination.

**5.2. How to Request a Reinvestigation.** You may request a reinvestigation if you are the subject of a final LOD and misconduct determination and there is new evidence. You must:

- 5.2.1. Make a written application to the appointing authority, who directed the first investigation, within 45 calendar days after receiving a copy of the formal determination.
- 5.2.2. Attach the new evidence to the copy of the formal report of investigation.
- 5.2.3. Send a copy of the written application, without attachments, to the office named in paragraph [4.4.6.2](#). This office files the copy of the application with the original investigation, pending resolution of the request.

**5.3. Appointing and Reviewing Authority Instructions :**

- 5.3.1. Grants the request and reopens the investigation, or
- 5.3.2. Denies the request and forwards the request along with justification to the approving authority for action.

**5.4. Approving Authority Instructions:**

- 5.4.1. Denies the request, and
  - 5.4.1.1. Returns the documentation to the member with copies of the actions taken by the appointing and reviewing authorities.
  - 5.4.1.2. Advises the member in writing why you denied the request and tells him or her of the remedy provided by AFI 36-2603, *Air Force Board for Correction of Military Records* (formerly AFR 31-3). Send copies of the new evidence and the originals of the actions taken by the appointing, reviewing, and approving authorities to the office named in paragraph [4.4.6.2](#). That office is the final custodian for filing of the original investigation.
- 5.4.2. Grants the request, and directs the reinvestigation.

**5.5. Reinvestigation of Death Cases:**

- 5.5.1. Dependents of deceased military personnel who do not qualify for benefits under Title 37 U.S.C., Section 403(l) due to an adverse LOD and misconduct determination can request a reinvestigation (see paragraph [1.2.2.4](#) for an explanation.). A legal guardian appointed to represent the interests of a surviving minor dependent or an adult adjudged incompetent to manage his or her own affairs submits a request for reinvestigation on their behalf (See paragraph [4.6.4.1.2](#)).

5.5.2. See instructions in paragraph [5.2](#). to submit a request for reinvestigation of death cases. Guardians requesting a reinvestigation on behalf of a minor or incompetent must submit, with the application, evidence (such as a court order) that they are that person's guardian. The staff judge advocate reviews documentation establishing guardianship.

5.5.3. Process action taken on the request for reinvestigation as outlined in paragraph [5.3](#).

**5.6. Procedures for Reinvestigation:** See [Attachment 10](#).

BILLY J. BOLES, Lt General, USAF  
DCS/Personnel

**Attachment 1****GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS*****References***

Title 5 United States Code

Title 10 United States Code

Title 32 United States Code

Title 37 United States Code

Title 38 United States Code

***Abbreviations and Acronyms***

**AFRES**—Air Force Reserve

**AFROTC**—Air Force Reserve Officer Training Corps

**ANG**—Air National Guard

**ANGUS**—Air National Guard of the United States

**ARS**—Air Reserve Squadron

**AT**—Annual Tour

**AWOL**—Absent Without Leave

**BAQ**—Basic Allowance for Quarters

**CAR**—Casualty Assistance Representative

**CFR**—Code of Federal Regulations

**CRPO**—Consolidated Reserve Personnel Office

**DEERS**—Defense Enrollment Eligibility Reporting System

**EAD**—Extended Active Duty

**EPTS**—Existed Prior to Service

**HQ ARPC**—Headquarters Air Reserve Personnel Center

**IMA**—Individual Mobilization Augmentee

**LOD**—Line of Duty

**MAJCOM**—Major Command

**MPerRGp**—Master Personnel Records Group

**MPF**—Military Personnel Flight

**OHA**—Overseas Housing Allowances



**PEB**—Physical Evaluation Board

**PCS**—Permanent Change of Station

**SGR**—Office of Patient Affairs

**SJA**—Staff Judge Advocate

**UCMJ**—Uniform Code of Military Justice

**USAFA**—United States Air Force Academy

**USAFR**—United States Air Force Reserve

**UTA**—Unit Training Assembly

**VHA**—Variable Housing Allowance

### ***Terms***

**Absent Without Authority**—Consider member "absent without authority" if he or she is voluntarily absent without leave for more than 24 hours, or was voluntarily absent from a scheduled duty or formation, a restriction, or an arrest. Scheduled duty or formation means doing a specified task at a specified time and place for a specified purpose. It is not the same as regularly scheduled duty. Consider the member "absent without authority" if not excused and absent from duty in civil confinement for more than 24 hours. The term "absent without authority" is the same as "unauthorized absence."

**Alcohol Abuse**—The use of alcoholic beverages leading to a person's misconduct, or to impairment of duty performance, or physical or mental health. It is excessive use of alcoholic beverages under all of the circumstances of the case. Give consideration to, but not limited to, the amount, type, and intoxicating effect of the alcoholic beverage used; the period of time of its use; and the physical condition of the user. It is the same as "intemperate use of alcohol."

**Alcoholism**—A psychological or physical dependence on alcohol.

**Disease**—A condition of an organ, part, structure, or system of the body in which there is incorrect function resulting from the effect of heredity, infection, diet, or environment. It is the same as illness, sickness, or ailment. See paragraph 1.2.3. when addressing AFROTC cadets.

**Drug Abuse**—The unauthorized, intentional use of drugs in any amount not approved by qualified medical authority for specific medical treatment or for other legitimate purposes. It is the same as "intemperate use of drugs."

**Drugs**—Substances identified as controlled substances by the Attorney General of the United States acting pursuant to the authority of Title 21 U.S.C., Section 811 and published in 21 Code of Federal Regulations (CFR) 1308. A list of commonly abused drugs is in AFI 36-2701, *Social Actions Program* (formerly AFR 30-2).

**Existed Prior to Service (EPTS)**—Term added to a medical diagnosis where there is clear evidence that a disease or injury, or the underlying condition causing it, existed before the member's entry into military service or between periods of service, and was not aggravated by service. EPTS diseases include chronic diseases and diseases with an incubation period that rule out a finding that they started during inactive duty training, active duty training, or tours of active duty.

**Habit Forming Drugs**—Drugs that can lead to either physical or psychological dependence.

**Hostile Casualty**—A person who is the victim of a terrorist activity or who becomes a casualty "in action." (See DoD Directive 1300.18 dated December 27, 1991.)

**Incapacitation Benefits**—Entitlement for Reserve members to compensation for incapacitation or loss of civilian earnings as a result of an injury, illness or disease incurred or aggravated in the line of duty. (See DoD Directive 1241.1 dated December 3, 1992.)

**Injury**—Includes such conditions as fractures, wounds, strains, sprains, dislocations, concussions, and compressions. In addition, it includes conditions resulting from extremes of temperature or prolonged exposure. Acute poisonings (except those due to contaminated food) resulting from exposure to a toxic or poisonous substance are also injuries. See paragraph 1.2.3. when addressing AFROTC cadets.

**In Line of Duty**—Make this determination unless a preponderance of the evidence supports the finding that the member's disease, injury, or death happened while the member was absent without authority or proximately caused by the member's own misconduct. Confine the meaning of "line of duty" in this instruction to the purpose of this instruction. It is completely distinct from usage under the Federal Tort Claims Act, Title 28 U.S.C., Section 2671, and has no bearing on the meaning or application of the phrase "acting within the scope of his office or employment" as used in that Act.

**Intentional Conduct**—An act, by commission or omission, done on purpose.

**Lost Time**—Time (if more than 24 hours) which must be made up (served) by an enlisted member who is unable to perform military duties because of intemperate use of drugs or alcohol, or because of disease or injury resulting from misconduct.

**Mental Responsibility**—We presume that all members are mentally responsible for their acts, unless there is contrary evidence. This presumption usually means it is unnecessary to pursue the issue of mental responsibility unless there is credible evidence of lack of mental responsibility. Such evidence may consist of the circumstances surrounding disease, injury, or death, previous abnormal or irrational behavior, expert opinion, or other evidence directly or indirectly pointing toward lack of mental responsibility. You may not hold members responsible for their misconduct and its foreseeable consequence if, as a result of mental disease or defect, they lack substantial capacity either to appreciate that their conduct is wrong or to conform the conduct to the requirements of law. The term "mental disease or defect" does not include an abnormality manifested only by repeated wrongful or otherwise antisocial behavior. Members with impaired mental faculties as a result of their own prior misconduct, such as by taking a hallucinogen, other illegal (controlled) substance, or deliberately ingesting any harmful/dangerous substance, are mentally responsible.

**Misconduct**—Intentional conduct that is wrongful or improper. Also, willful neglect.

**Not in Line of Duty, Due to Own Misconduct**—Make this determination when a preponderance of the evidence supports the finding that the member's disease, injury, or death was proximately caused by the member's own misconduct. Make this determination regardless of whether the member was absent without authority.

**Not in Line of Duty, Not Due to Own Misconduct**—Make this determination when a preponderance of the evidence supports the finding that the member's disease, injury, or death happened when absent without authority, and the disease, injury, or death was not proximately caused by the member's own misconduct. Make this determination in the following special cases even if the member was not "absent without authority" at the time.

An injury or disease affecting a Regular Air Force member, USAFR member, or ANGUS member while engaged in a material deviation from an "authorized" travel route (paragraphs 1.2.2.2. and 1.2.2.3.).

A USAFR member or an ANGUS member injures or aggravates an injury while traveling either to or from inactive duty training or to or from a period of active duty for 30 days or less and materially deviates from the "authorized" travel route (paragraph 1.2.2.3.). **NOTE:** If the known facts raise a question whether the member materially deviated from the authorized travel route, make an LOD and misconduct determination.

**Proximate Cause**—It is the cause that, in a natural and continuous sequence unbroken by an independent and unforeseeable new cause, results in the disease, injury, or death and without which the disease, injury, or death would not have occurred. Proximate cause may also be the primary moving cause or predominating cause, and is the connecting relationship between the intentional misconduct or willful negligence of the member and the disease, injury, or death that results as a natural, direct, and immediate consequence that supports a "not in line of duty" due to own misconduct determination. As a general rule, to warrant a finding that an act of misconduct was the proximate cause of disease, injury, or death, it must appear that, in light of all attending circumstances, it could reasonably have been anticipated by the member concerned that disease, injury, or death might result from such misconduct.

**Preponderance of the Evidence**—The greater weight of credible evidence. That evidence that, when fairly considered, produces the stronger impression and is more convincing as to its truth when weighed against the opposing evidence.

**Under the Influence of Alcohol or Drugs**—Any intoxication caused by alcohol or by drugs that is sufficient to impair the rational and full exercise of the mental or physical faculties.

**Willful Neglect**—An act or acts of omission or of commission that evidence a reckless or wanton disregard for their attendant consequences. Conduct that indicates a member exhibited a reckless or wanton disregard for his or her own personal well-being or for the well-being of another. Same as gross negligence.

## Attachment 2

### TYPES OF LODS, WHO MAKES DETERMINATIONS, AND HOW TO RECORD THEM

**A2.1. Administrative Determinations .** The medical officer makes administrative determinations under the following circumstances:

A2.1.1. Hostile casualties.

A2.1.2. Injuries, or death of members leaving surviving dependents, incurred while a passenger in a common commercial carrier or a military aircraft.

A2.1.3. Diseases, injuries, or death of members leaving surviving dependents, not included in paragraph [A7.1.1.](#) or [A7.1.2.](#), if:

A2.1.3.1. The disease or death is of natural origin that does not involve misconduct, drug or alcohol abuse; or

A2.1.3.2. The injury is a simple injury (sprain, contusion, or minor fracture) not likely to result in a permanent disability; and

A2.1.3.3. The disease, injury, or death did not happen while the member was absent without authority and was clearly not caused by the member's own misconduct.

A2.1.4. EPTS diseases or injuries:

A2.1.4.1. The medical officer makes an entry in the member's medical records when a member dies leaving surviving dependents or for USAFR members when required for medical care and pay purposes.

A2.1.5. Presume all other cases covered by paragraphs [A7.1.1.](#) through [A7.1.3.](#) as "in line of duty" if an AF Form 348, **Line of Duty Determination**, is not initiated. You do not have to make an entry in member's medical records.

**A2.2. Informal Determinations.** The member's immediate commander ([Table 3.4.](#)) normally makes and records informal determinations on the AF Form 348 when:

**A2.2. (AFRC)** For USAFR unit assigned members the next higher level commander may make informal determinations on AF Form 348 in the absence of member's immediate commander. Failure to expedite the LOD process may result in delay of member's incapacitation benefits.

A2.2.1. An administrative determination cannot be made; and the disease, injury, or death of member leaving surviving dependents did not happen while the member was absent without authority or due to the member's own misconduct.

A2.2.2. Reserve members are unable to perform duties for more than 24 hours, when the member's tour of duty is expiring and there is a requirement for continued medical care, when the disease or injury is likely to result in partial or permanent disability, or if the disease or injury could result in a request for incapacitation benefits.

**A2.2.2. (AFRC)** For USAFR unit assigned members, when the members tour of duty is expiring and there is a requirement for continued medical care, when the disease or injury is likely to result in par-

tial or permanent disability, or if the disease or injury could result in a request for incapacitation benefits.

A2.2.2.1. Reserve members can request incapacitation benefits though the member was able to perform his or her duties at the time.

**A2.2.2.1. (AFRC)** USAFR members can request incapacitation benefits for loss of earned civilian income, though the member was able to perform military duties at the time. **INSTRUCTIONS FOR COMPLETING AF FORM 348, LINE OF DUTY DETERMINATION**

**A2.3. Formal Determinations.** LODs require a formal report of investigation, review, and final action by the approving authority ([Table 3.5.](#), [Table 4.1.](#), and [Table 4.2.](#)).

A2.3.1. Required when neither an administrative determination nor an informal determination can be made. Record formal determinations on DD Form 261, **Report of Investigation Line of Duty and Misconduct Status** ([Attachment 3](#)).

**A2.4. Interim Line of Duty (LOD) For Reserve Members .** The appointing authority, at the request of the member's commander, may issue interim LOD determination if an LOD determination (paragraphs [A2.1.](#) through [A2.3.](#)) can not be finalized within 7 days of notification and it is possible that the members may be entitled to incapacitation benefits. The interim LOD is valid for no more than 90 days.

A2.4.1. Do not make an interim LOD if there is clear and convincing evidence showing an EPTS condition or it appears that misconduct was the proximate cause of the incapacitation.

A2.4.2. Record an interim LOD in a memorandum, containing a description of the injury, illness or disease, the date it occurred, the type of military status the member was in at the time, and the current status of the final LOD determination, signed by the appointing authority, and datafax to HQ AFRES/DPPAS for a control number. Also send a copy to the servicing MPF/MSPPA or Reserve CBPO Quality Force Career Enhancement Section for processing, in accordance with paragraph [3.6](#).

**Attachment 3****INSTRUCTIONS FOR PREPARING DD FORM 261, REPORT OF INVESTIGATION,  
LINE OF DUTY AND MISCONDUCT STATUS**

**A3.1. Preparing DD Form 261.** Attach this cover sheet to each copy of the report of investigation. Complete the items as follows:

A3.1.1. Item 1, self-explanatory.

A3.1.2. Item 2, enter the organization and address of the appointing authority.

A3.1.3. Item 3, check applicable blocks.

A3.1.4. Item 4 through 9f, self-explanatory.

A3.1.5. Item 9g, enter a brief summary of the circumstances of the incident as determined by the investigation. Limit comments to the space provided.

A3.1.6. Item 10, enter the finding deemed appropriate as a result of the investigation. (See paragraph [2.4.](#) and [Attachment 6](#))

A3.1.7. Date and sign all copies of the form in the space provided for the investigating officer.

**A3.2. Forwarding Documentation.** Send all documentation to the staff judge advocate serving the appointing authority for legal review.

**Attachment 4****GUIDE FOR LOD AND MISCONDUCT INVESTIGATING OFFICERS**

**A4.1. Purpose .** The purpose of an LOD investigation is to protect the interests of the member being investigated and to ensure the government awards benefits properly. It is primarily a fact-finding process. The report of investigation includes all information needed to evaluate the disability claims and other issues related to the disease, injury, or death of a member leaving surviving dependents that may arise immediately or many years later. The LOD and misconduct investigation is separate and distinct from judicial processes or other disciplinary action. Adverse findings are not vehicles for imposing punishment or as means of setting an example.

**A4.2. Preliminary:**

A4.2.1. The appointing authority will provide the original of the AF Form 348 and copies of the appointing document. These documents usually have sufficient data to give the investigating officer an insight into the matter requiring investigation.

A4.2.2. Read this instruction with particular attention to those parts that have specific application to the investigation.

A4.2.3. Consult with SJA before beginning the investigation and as often as necessary.

A4.2.4. If a member dies leaving surviving dependents, contact the MPF/MSPPA to determine if that office has documentation relative to the member's death as required by AFI 36-3002, *Casualty Services*. A review of the documents may provide an appropriate starting point for the IO's investigation.

**A4.3. The Course of the Investigation:** The investigating officer is responsible for:

A4.3.1. Determining duty status according to the following guidelines:

A4.3.1.1. Generally:

A4.3.1.1.1. A disease, injury, or death of a member leaving surviving dependents, incurred while a member is absent without authority, is "not in line of duty". It does not matter whether the disease or injury was or was not the result of the member's misconduct.

A4.3.1.1.2. For the definition of the term "absent without authority," see [Attachment 1](#), Terms.

A4.3.1.1.3. Unless there is evidence to the contrary, you may rely on the immediate commander's finding (AF Form 348, item 15A or 15B) that the member was "present for duty" or was "absent with authority."

A4.3.1.1.4. Inquire further into the facts and circumstances of the member's duty status when the immediate commander finds (AF Form 348, item 15C or 15D) the member was "absent without authority," or where there is evidence to indicate the commander's finding of "present for duty" or "was absent with authority" is incorrect. The report of investigation must fully document the basis for the finding recorded on DD Form 261.



A4.3.1.1.5. Inquire further into the relationship between the incidence of the member's disease, injury, or death leaving surviving dependents, and his or her duty status when the immediate commander indicates (AF Form 348, item 15E) that "Not in Line of Duty, Not Due to Own Misconduct" is applicable. It is not unusual, in this case, for this relationship to be the only issue which requires resolution. The report must fully document the basis for the finding.

A4.3.1.1.6. Documentation in these instances may be in the form of orders, records of duty status changes, incident reports, statements of witnesses, or other evidence that supports the final finding.

A4.3.1.2. For members who incur a disease or injury or who die leaving surviving dependents while traveling to or from duty or training:

A4.3.1.2.1. Document the member's status in relation to the duty or training undertaken. Copies of relevant orders are essential.

A4.3.1.2.2. When the disease, injury, or death occurs while the member is traveling to or from duty or training, document the hour the member was scheduled to start duty or training, or the hour they completed duty or training, the method of travel, the shortest route between the place of duty or training, and the place where the member commenced travel to start duty or the place where the member was returning after completing duty or training. Use maps or diagrams. Document the time and place the disease, injury, or death occurred and any other facts relevant to the question of whether the member, at the time the disease, injury, or death occurred, was on the "authorized" route to or from duty or training at a time when he or she would have been normally expected to be traveling.

A4.3.2. Determining whether misconduct was or was not the proximate cause of the member's disease, injury, or death.

A4.3.2.1. For explanations of the terms "misconduct" and "proximate cause," see [Attachment 1](#).

A4.3.2.2. To do this, get the facts by:

A4.3.2.2.1. Interviewing witnesses, including the member.

A4.3.2.2.2. Getting copies of military police reports; extracts or summaries of Office of Special Investigations (OSI) reports; hospitalization or clinical records; blood, breath, urine, or tissue tests; and photographs.

A4.3.2.2.3. Getting copies of civilian police reports, if any. Generally, civilian police reports involving traffic investigations are available from the civilian agency involved. In some states, civilian police reports involving criminal investigations are not directly available. In any case where there are problems in getting civilian police reports, contact the local OSI for help in getting copies of these reports or an extract or summary of them.

A4.3.2.2.4. Preparing maps, charts, diagrams, or other exhibits that might be helpful to an understanding of the incident.

A4.3.2.2.5. Getting evidence regarding the mental responsibility of the member.

A4.3.2.2.5.1. Get a copy of the psychiatric evaluation and include it in the investigative file. If there has been no psychiatric evaluation and one is necessary, have the member's commander or the appointing authority to request one and get a copy for the file.



A4.3.2.2.5.2. For suicide cases, collect all possible evidence bearing on the mental condition of the deceased. This includes evidence on deceased's actions or moods immediately before the suicide, any problems that might motivate the act, and any mental health examinations.

A4.3.2.2.6. Obtain the report of autopsy findings in death cases. This includes blood alcohol results and toxicology studies. Refer to AFM 160-19, *Autopsy Manual* and AFI 41-115, *Administration of Medical Activities* (formerly AFR 168-4).

A4.3.2.2.7. Covering any other matters deemed relevant.

**A4.4. Witnesses** . Interview all witnesses who have knowledge of the matter under investigation. This includes those listed on AF Form 348 and any others considered necessary. Interview the subject of the investigation in all cases except where precluded by medical necessity. If witnesses, other than the subject are not available for personal interview, get copies of available sworn or unsworn statements made by those witnesses to other investigators. If no such statements are available, arrange, where possible, for others to take the statements.

A4.4.1. You do not have to advise civilian witnesses ([Figure A4.1.](#)) or military witnesses not suspected of committing an offense ([Figure A4.2.](#)).

A4.4.2. Advise a military witness of his or her rights under Article 31: Uniform Code of Military Justice (UCMJ) when you suspect the commission of an offense. Consult with the SJA on the form of the advice. See [Figure A4.3.](#)

A4.4.3. Advise the subject of the investigation before interrogation:

A4.4.3.1. In all cases, advise the member of Title 10 U.S.C., Section 1219 which states: "A member of an armed force may not be required to sign a statement relating to the origin, incidence, or aggravation of a disease or injury that he has. Any such statement against (his)(her) interests, signed by a member, is invalid."

A4.4.3.2. Advise the member of his or her rights under Article 31: UCMJ, if you suspect they committed an offense. Consult with the SJA on the form of the advice. See [Figure A4.3.](#) .

A4.4.4. If the member under investigation has been transferred from the place where the investigation is held, request the member's new commander or, if applicable, the hospital commander where the member is hospitalized, get a statement and forward it for inclusion in the report of investigation. You must give the preliminary advice to the member required by this instruction without regard to who gets the statement.

A4.4.5. In any event, the report of investigation must contain the sworn statement of the subject of the investigation or an explanation of the efforts made to get it and the reasons why you could not obtain it.

A4.4.6. If a witness, including the subject, provides relevant information but declines to or cannot sign a written statement, then prepare a written summary of the information provided orally. Include the summary in the investigative file along with an explanation of the reason for it.

A4.4.7. Advise all witnesses asked to supply personal information in an LOD investigation of relevant provisions of the Privacy Act (Title 5 U.S.C., Section 552a(c)(3)). The sample formats for wit-

nesses' statements ([Figure A4.1.](#), [Figure A4.2.](#), and [Figure A4.3.](#)) contain appropriate Privacy Act advice. Include the Privacy Act statement on the form used to collect all witnesses' statements.

#### **A4.5. The Report of Investigation:**

A4.5.1. Consists of DD Form 261 which serves as a cover sheet and forwarding document, an index of exhibits, an investigating officer summary, and the documents collected during the course of the investigation. Assemble it as provided below. If typing and administrative support is not readily available, ask the appointing authority to arrange for it.

A4.5.2. All documents in the report must be of good quality. Original documents should be in the report if at all possible. If originals are not available, reproduction should be on bond paper. Carbon copies are acceptable but they must be of such quality to reproduce clearly.

A4.5.3. The investigating officer's summary is a narrative report prepared at the conclusion of the investigation. It includes a statement of the authority under which the investigation was conducted, identification of any duty time lost, the matters investigated, the facts, a discussion of those facts as they relate to the issues under investigation, conclusions, and a statement of findings.

A4.5.4. Fill out two copies of the DD Form 261 and the report of investigation (fill out three copies when the subject is an AFRES member whose strength accountability is with an AFRES unit and fill out four copies when the subject is an ANGUS member whose strength accountability is with an ANGUS unit) and assemble them as follows:

A4.5.4.1. DD Form 261 as the cover sheet.

A4.5.4.2. Tab A - Index of exhibits.

A4.5.4.3. Tab B - Summary of the investigating officer.

A4.5.4.4. Tab C - Copy of the investigating officer's appointing documents.

A4.5.4.5. Tab D - Copy of AF Form 348.

A4.5.4.6. Tab E - Sworn statement of the subject of the investigation, or investigating officer certificate describing the attempts made to get such a statement and stating the reasons why you could not obtain it.

A4.5.4.7. Tab F - Statements of witnesses. If the report of investigation indicates that there is a witness who has relevant and important knowledge of the incident under investigation but a statement from that witness or a summary of the witness' oral testimony is not in the report, include under this tab an explanation of why such statement or summary is not in the file.

A4.5.4.8. Tab G - Copies of official orders or other documents; for example, Reserve orders to active duty for training or inactive duty training; or copies of AF Form 2098 showing AWOL status.

A4.5.4.9. Tab H - Copies of other investigative reports prepared by military or civilian authorities.

A4.5.4.10. Tab I - Maps, photographs, or sketches.

A4.5.4.11. Tab J - Medical records, but only those relevant to determining LOD and misconduct status. This includes reports of autopsy findings. For example, SF 502, **Medical Record--Narrative Summary**; psychiatric evaluation; or results of blood alcohol tests.

**NOTE:**

The investigating officer may add tabs K, L, M, etc., if the report includes data not covered by another tab. Where more than one exhibit appears under a given tab, label the exhibits separately; for example, F-1, F-2, and F-3. Where there are no exhibits to include behind a given tab, the tab letter should still appear in the index with the notation "No exhibits, this tab."

**Figure A4.1. Sample Format for Statement of a Civilian Witness.****STATEMENT**

I, \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (address) \_\_\_\_\_, am aware of the purpose of this investigation and of the importance of a correct and complete statement of the facts as known to me, I understand the foregoing and voluntarily make the following sworn statement:

(body of statement)

\_\_\_\_\_  
(signature of witness)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(signature of person administering the oath (see note 1))

**AUTHORITY:** Title 5 U.S.C., Sections 2108, 3309-3315, and 8140; Title 10 U.S.C., Sections 507, 972, 1074, 1201-1221; Title 37 U.S.C., Sections 204, 403, 802; Title 38 U.S.C., Sections 1110, 1131, 1710, 1712; and EO 9397.

**PURPOSE:** Information provided is used by processing activities in determining whether the diseased, injured, or deceased member was or was not acting in line of duty when the disease, injury, or death occurred. The information will be filed in the member's master personnel record group and the member, if alive, or the surviving next of kin will receive a copy as well. Information may be reviewed by the base ground safety office.

**ROUTINE USES: NONDISCLOSURE IS VOLUNTARY:** If information is not provided, the Air Force will complete processing using information that is available. (See note 2.)

**NOTES:**

1. The investigating officer, any other person authorized by Title 10 U.S.C., Section 936, or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.
2. Include the Privacy Act statement on the form used to collect the witness statement.

**Figure A4.2. Sample Format for the Statement of a Military Witness Other Than the Subject of the**

**Investigation.****STATEMENT** (see note 1)

I, \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (grade) \_\_\_\_\_, \_\_\_\_\_ (organization) \_\_\_\_\_, am aware (of my rights under Article 31: UCMJ (see note 2)) of the purpose of this investigation, and of the importance of a correct and complete statement of the facts as known to me (see note 3). I understand the foregoing and make the following sworn statement:

(body of statement)

\_\_\_\_\_  
(signature of witness, SSN)

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(signature of person administering the oath (see note 4))

**AUTHORITY:** Title 5 U.S.C., Sections 2108, 3309-3315, and 8140; Title 10 U.S.C., Sections 507, 972, 1074, 1201-1221; Title 37 U.S.C., Sections 204, 403, 802; Title 38 U.S.C., Sections 1110, 1131, 1710, 1712; and EO 9397.

**PURPOSE:** Information provided is used by processing activities in determining whether the diseased, injured, or deceased member was or was not acting in line of duty when the disease, injury, or death occurred. The information will be filed in the member's master personnel record group and the member, if alive, or the surviving next of kin will receive a copy as well. Information may be reviewed by the base ground safety office.

**ROUTINE USES:** NONE

**DISCLOSURE IS MANDATORY:** If information known to a military witness is not provided when lawfully ordered to do so by the investigating officer, the witness is subject to punishment under the UCMJ.

**NOTES:**

1. Include the Privacy Act statement on the form used to collect the witness statement.
2. Omit if military member is not suspected of committing an offense.
3. After explaining the purpose and importance of the investigation, request the military witnesses to provide any relevant information known to them. In the rare case, a military witness may not wish to disclose information. The investigating officer can legally order a military witness other than the subject of the investigation, to disclose the information if the disclosure will not tend to incriminate the witness. A military witness can rely upon

4. The investigating officer, any other person authorized by Title 10 U.S.C., Section 936, or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.

**STATEMENT** (see note 1)

(signature of person administering the oath (see note 3))

**DISCLOSURE IS VOLUNTARY:** If information is not provided, the Air Force will complete processing using information that is available.

**NOTES:**

1. Include the Privacy Act statement on the form used to collect the witness statement.
2. Omit if military member is not suspected committing of an offense.
3. The investigating officer, any other person authorized by Title 10 U.S.C., Section 936, or a notary public, may administer the oath. Enter the typed or printed name, grade, and organization or, if a notary, the notary's identification under the signature block.

## Attachment 5

**LOD (MISCONDUCT) DETERMINATIONS FOR VARIOUS SITUATIONS**

**A5.1. Fights.** Aggression or voluntary participation in a fight or similar encounter, where a member is at least equally at fault with the adversary in starting or continuing the fight, is evidence of misconduct. Additional evidence of misconduct includes provocative actions or language taken or uttered under circumstances where a reasonable person would anticipate retaliation. There is no misconduct if a member is a victim of an unprovoked assault or acts in self-defense. Misconduct may not always be the proximate cause of injury or death caused by excessive means. For example, where a fight is underway and an adversary uses an excessive means that, under the circumstances, could not reasonably be foreseen. However, there can be a causal connection between the misconduct and the injury or death where a member persists in a fight or other encounter knowing that an adversary has produced a dangerous weapon. Determine each case on its own facts.

**A5.2. Alcohol Abuse:**

A5.2.1. A member may accrue lost time because of inability to do military duties for more than 24 hours as a result of intemperate use of alcohol whether or not there is a resulting disease or injury (Title 10 U.S.C., Section 972(5)). Alcohol abuse is not a disease or an injury for the purpose of requiring an LOD determination (AFI 36-2701, *Social Actions Operating Procedures* (formerly AFR 30-2) and AFI 48-123, *Medical Examination and Medical Standards* (formerly AFR 160-43)).

A5.2.2. Make an LOD determination when, as a result of diseases secondary to alcohol abuse, the member is unable to do his or her duty for more than 24 hours or there is the likelihood of a permanent disability. These diseases may be organic and chronic (Laennec's cirrhosis, fatty metamorphosis of the liver, chronic brain syndrome) or they may be acute and transient (severe, sharp but short, passing quickly). Generally, do not determine misconduct in cases involving a disease that is secondary to alcohol abuse and which is organic and chronic. However, consider misconduct in cases involving a secondary disease that is acute and transient and which is directly caused by and immediately follows alcohol abuse.

A5.2.3. Make an LOD determination when alcohol abuse causes the death of a member, leaving surviving dependents, or an injury that results in a member's inability to perform duty for more than 24 hours, or results in the likelihood of a permanent disability.

A5.2.4. The ultimate determination is whether the member's misconduct is the proximate cause of the disease, injury, or death.

**A5.3. Drug Abuse:**

A5.3.1. A member may accrue lost time because of inability to do military duty for more than 24 hours as a result of drug abuse whether or not there is a resulting disease or injury (Title 10 U.S.C., Section 972(5)). Drug abuse is not a disease or an injury for the purpose of requiring an LOD determination (AFI 36-2701 (formerly AFR 30-2)) and AFI 48-123 (formerly AFR 160-43). Make an LOD determination only when a condition relating to drug abuse results in some identifiable disease or results in an injury or in the death of a member leaving surviving dependents.

A5.3.2. Drug abuse is evidence of misconduct. Consider the result of misconduct any disease, injury, or death which proximately results from drug abuse. This includes the debilitating effect the drug has on the body and the effect the drug has in impairing the member's mental or physical faculties affecting his or her actions. Do not excuse from resulting misconduct a member with a preexisting physical condition which causes them to be more susceptible to the effects of the drug. You can determine misconduct through information from the limited privilege communication program (AFI 36-2701 (formerly AFR 30-2)), identification through urinalysis, or incident to medical care for other than drug abuse.

A5.3.3. The ultimate determination is whether the member's misconduct is the proximate cause of the disease, injury, or death.

**A5.4. Explosives, Firearms, and Dangerous Substances.** Unexploded ammunition or other objects, firearms, and highly flammable liquids are inherently dangerous and their handling necessitates a high degree of care. Tampering with, attempting to ignite, or otherwise handling such objects in disregard of their dangerous qualities is strong evidence of misconduct.

**A5.5. Extended Treatment for Secondary Conditions:**

A5.5.1. In the process of treatment for a medical condition that would not require an LOD and misconduct determination a member may also receive treatment or undergo observation for a different (secondary) condition which does cause an inability to perform military duty for more than 24 hours. The condition may itself be a disease or injury, or it may manifest itself as a mental condition or as incapacitation resulting from intemperate use of drugs or alcohol requiring a lost time determination (Title 10 U.S.C., Section 972(5)). Make an LOD determination in these cases.

A5.5.2. For example, treatment for a superficial self-inflicted injury that is insufficient to require hospitalization for more than 24 hours. However, the member remains hospitalized in excess of 24 hours for observation of his or her mental condition. You do not need a LOD determination for the injury itself. You need to decide if the reason for the extended hospitalization (for example, observation of the member's mental status) is due to the member's own misconduct (for example, drug abuse) or is due to an EPTS condition.

A5.5.3. Findings of in line of duty or EPTS are appropriate when the misconduct requiring initial hospitalization is unrelated to the condition requiring hospitalization in excess of 24 hours. For example, a member's mental state which naturally develops some time before a suicidal gesture. Make these findings by an administrative determination if possible.

**A5.6. Joint Ventures; Imputed Misconduct.** You can hold a member responsible for the misconduct of another if the member exercises control over, and is responsible for, the conduct of the principal actor, or if the circumstances demonstrate coordinated action sufficient to establish a joint enterprise. Mere presence of the member is not sufficient to establish a joint enterprise or to give a basis for holding the member responsible for the misconduct of another. There is no obligation to exert a positive or constructive influence over the conduct of the principal actor.

**A5.7. Motor Vehicle Accidents:**

A5.7.1. You can find misconduct when a member who knows, or should reasonably know, of his or her unfitness is injured or dies as the result of driving a motor vehicle when unfit to do so. Voluntary



intoxication, use of drugs, or other circumstances that affect the member's mental or physical faculties cause a member to be unfit. It is not necessarily misconduct when a member has a motor vehicle accident because he or she fell asleep while driving. The test for misconduct is whether a reasonable person, under the circumstances and conditions similar to those under which the member is driving, would or would not have undertaken to drive and whether, having elected to drive, the member's actions constitute intentional misconduct or willful neglect. It is also possible to find misconduct when a member, who is otherwise fit to drive, operates a motor vehicle in an intentionally wrongful or negligent manner.

A5.7.2. Injury or death incurred while not wearing safety devices such as seat belts or safety helmets is one factor to consider. Standing alone, the violation of a safety standard or regulation constitutes only simple negligence. The violation must, under the circumstances, amount to gross, willful, or wanton carelessness to constitute misconduct. The failure to use safety devices may have nothing to do with the proximate cause of the injury or death. For example, the failure to wear a safety helmet may have nothing to do with a motorcyclist who breaks a leg. In other cases, failure to use safety devices can aggravate the injuries, but will not be the proximate cause of the injuries or death. Do not focus solely upon whether or not the member was wearing seat belts or other protective devices at the time of the accident, instead carefully examine the facts and circumstances of each case.

**A5.8. Participation in Inherently Hazardous Off-Duty Activities.** Determine the LOD status of members participating in inherently hazardous off-duty activities the same way as any other case. Consider the nature of the activity, its inherent hazards, and the prior training and experience of the member.

**A5.9. Pregnant Members.** Do not perform an LOD determination for pregnancy or for any diagnosis associated with pregnancy. Make an LOD determination if the member is unable to do her duties for more than 24 hours; or there is the likelihood of a permanent disability, or in the case of death, in cases involving an induced abortion in violation of the law of the location of the abortion.

**A5.10. Refusal of or Failure to Seek Medical or Dental Treatment.** Consider misconduct, unreasonable refusing, or failing through willful neglect or by design to submit to medical, surgical, or dental treatment, which proximately causes disease, injury, or death even though misconduct did not cause the original condition.

**A5.11. Residual Effects of Surgery or Treatment.** Normal disability resulting from the surgery or treatment of a disease or injury incurred "not in line of duty" is likewise "not in line of duty." However, you may find unanticipated residuals from the surgery or treatment, as incurred "in line of duty."

**A5.12. Resisting Arrest; Escape From Custody.** Consider any injury or death suffered while resisting arrest or trying to escape from custody a result of the member's own misconduct. The member can reasonably anticipate the use of necessary force, even excessive force, to restrain him or her. One who engages in such activities acts in disregard of personal safety.

**A5.13. Suicide Attempts and Suicide of Members Leaving Surviving Dependents:**

A5.13.1. A bona fide suicide attempt, in the absence of any intervening misconduct, raises a strong inference of lack of mental responsibility because of the instinct for self-preservation. A bona fide suicide attempt is sufficient evidence to rebut the presumption that the member was mentally respon-

sible. In such cases, obtain evidence on the question of mental responsibility including expert psychiatric evaluation. Consider all evidence bearing on the suicide or suicide attempt including evidence on the person's social background, his or her actions immediately before the suicide or suicide attempt, and any problems that might serve as motivation for the incident.

A5.13.2. Intentionally self-inflicted injury or disease, not prompted by a bona fide suicide attempt, is at most a suicidal gesture. Such disease or injury may be the result of the member's own misconduct, unless you can show a lack of mental responsibility. Determine mental responsibility at the beginning of any absence where a suicide attempt or suicidal gesture occurs while the member is absent without authority in addition to the requirements of [A5.13.1](#).

**A5.14. Venereal Disease.** Do not consider such diseases to be the result of misconduct, unless the member fails to comply with regulations or orders requiring him or her to report for and receive treatment.

**Attachment 6****EXAMPLES OF LOD FINDINGS****A6.1. In Line of Duty:**

**A6.1.1. EXAMPLE 1.** A member becomes a hostile casualty.

**A6.1.2. EXAMPLE 2.** The injury or death of a member who leaves surviving dependents, while present for duty. The member's own misconduct did not proximately cause the injury.

**A6.1.3. EXAMPLE 3.** The injury of a USAFR or ANGUS member while performing inactive duty training or while traveling to or from inactive duty training. The member's own misconduct did not proximately cause the injury.

**A6.2. EPTS, LOD Not Applicable:**

**A6.2.1. EXAMPLE 1.** After enlisting, a member suffers a recurrence of malaria that he or she contracted before enlisting and was not aggravated by military service.

**A6.2.2. EXAMPLE 2.** A USAFR or ANGUS member becomes ill during a 3-day tour of active duty for training. The medical authority diagnoses the illness as a disease the member contracted before the start of the 3-day tour of active duty for training. There is no evidence of a connection with a previous tour of active duty, active duty for training, or inactive duty training. Also, an authority determines that military service did not aggravate the disease.

**A6.3. Not in Line of Duty, Not Due to Own Misconduct:**

**A6.3.1. EXAMPLE 1.** The injury or death of a member who leaves surviving dependents while absent without leave (AWOL). The member's own misconduct did not proximately cause the injury or death.

**A6.3.2. EXAMPLE 2.** A USAFR or ANGUS member incurs an injury while returning home after performing inactive duty training. The accident occurred at a time and place constituting a material deviation from the member's authorized travel route. The member's own misconduct did not proximately cause the injury.

**A6.3.3. EXAMPLE 3.** A member is AWOL at the time of being captured or taken hostage by a hostile group and, thereafter, is injured, becomes ill, or dies leaving surviving dependents, while being detained in a captive status. The member's own misconduct did not proximately cause the injury, disease, or death.

**A6.4. Not in Line of Duty, Due to Own Misconduct:**

**A6.4.1. EXAMPLE 1.** The injury or death of a member who leaves surviving dependents while present for duty. The member's own misconduct proximately caused the injury or death.

**A6.4.2. EXAMPLE 2.** The injury or death of a member who leaves surviving dependents while AWOL. The member's own misconduct proximately caused the injury or death.

**A6.4.3. EXAMPLE 3.** The injury of a USAFR or ANGUS member while performing inactive duty training. The member's own misconduct proximately caused the injury.

## Attachment 7

## INSTRUCTIONS FOR COMPLETING AF FORM 348, LINE OF DUTY DETERMINATION

This attachment provides item-by-item guidance to complete the AF Form 348.

**A7.1. Medical Facility Instructions:** The medical facility will prepare three copies of AF Form 348. Items 1 through 14 - Medical Facility (Front). The medical officer will complete all items.

A7.1.1. Enter organization and location of member's immediate commander in the "TO" block. Use [Table 3.4.](#) to determine the immediate commander.

A7.1.2. Enter the location of the MPF/MSPPA in the "THRU" block. See paragraph [3.2.1.](#) to identify the MPF/MSPPA.

A7.1.3. Enter organization and location of the medical facility preparing the form in the "FROM" block.

A7.1.4. If member is RegAF, AFROTC cadet, or USAFA cadet, check the appropriate block in item 5A. If member is ANGUS, check the appropriate block in item 5B telling who has strength accountability. If member is USAFR, check the appropriate block in item 5C telling who has strength accountability. If strength accountability is with the USAFR, check the appropriate block in item 5D telling whether the member is assigned to an active duty unit for training or not.

A7.1.5. Check the appropriate block of item 6 and give details. If the cause of the injury resulted in death of a member leaving surviving dependents, do not check any of the blocks. However, write the word "death" in item 6 along with a short description of the cause of death.

A7.1.6. Item 9. You may have to check one, two, or all three blocks depending on the circumstances of the case. If you do not check any of these blocks, there will not be a LOD and misconduct determination.

**A7.1.6. (AFRC)** Block A does not apply to USAFR members. Block C may be added to read "EPTS LOD not applicable" for USAFR members.

A7.1.7. Items 10 and 11. If the member was first seen by a civilian physician or by a medical officer of another armed force, get the necessary information from the civilian physician's records or from the records of the medical facility of the armed force where treatment was first provided.

A7.1.8. Item 12. Give as complete a description of the alleged circumstances as the available information permits. In the case of death of a member leaving surviving dependents, the medical officer will provide the presumptive medical cause of death.

**A7.1.8. (AFRC)** For USAFR members this entry is placed in block 12: "Existed Prior to Service was or was not considered and was or was not appropriate."

A7.1.9. Item 13. It is not necessary to give "names and addresses" if the source of the information is the member or the police.

A7.1.10. The Air Force medical officer who provided the treatment, or the hospital or facility commander must sign the form. **NOTE:** At some remote locations only a medical technician is in attendance at the Air Force unit. The technician may sign the medical officer's part of the form in such

circumstances but must note below his or her signature that there is no medical officer assigned at the remote location.

**A7.2. Immediate Commander Instructions (Reverse).** Complete items 15 through 20.

A7.2.1. Enter organization and location of the appointing authority in the "TO" block. Use [Table 3.5.](#) to determine the appointing authority.

A7.2.2. Enter organization and location of immediate commander in the "FROM" block.

A7.2.3. Item 15. Relates to the actual duty status of the member at the time the disease or injury occurred. A member who performs duty or who is on the installation in an off-duty status is "present for duty." A member who is away from the installation and not performing assigned duty is either "absent with authority" (this authority may be written, oral, or implied); is "absent without authority" as defined in [Attachment 1](#); or the member fits one of the special situations which apply only to USAFR and ANGUS members. Commanders of newly arriving members with treatment for a disease or injury prior to the move, but before the initiation of an AF Form 348, may have to consult with the member's former organization to determine the member's duty status at the time.

A7.2.4. Item 16. Record completely and concisely the circumstances surrounding the disease, injury, or death, based on the immediate commander's informal investigation. DO NOT SAY "SEE ITEM 12." Include the names and addresses of civilians involved in the same incident, if any. If you need more space, use plain bond paper and identify it as item 16. Include the type of tour and the inclusive tour dates for USAFR and ANGUS members.

A7.2.5. Item 17. Check appropriate block. If intentional misconduct or willful neglect of the member was not the proximate cause, check "neither of these" and specify the proximate cause. Refer to [Attachment 1](#) for explanation of terms.

A7.2.6. Item 18. Do not give "names and addresses" if the source of the information is the member or the police. Do not repeat names and addresses already appearing in item 13.

A7.2.7. Complete either item 19 or item 20.

A7.2.7.1. Check item 19 only if:

A7.2.7.1.1. The commander finds that the member was not absent without authority when the disease, injury, or death happened, and

A7.2.7.1.2. The commander finds that none of the special situations relating to NLOD/NDOM (Atch 1 and Atch 6.4) apply, and

A7.2.7.1.3. The commander finds that the disease, injury, or death was not proximately caused by the member's own misconduct.

**A7.2.7.1.4. (Added-AFRC)** The USAFR commander finds that the disease, illness, or injury is "EPTS, LOD not applicable." PROCEDURES FOR REINVESTIGATION

A7.2.8. The immediate commander finalizes "in line of duty" findings for members whose strength accountability is with the active duty force where there exists clear and convincing evidence supporting that finding and the SJA concurs in the finding. The immediate commander will delete the word "recommended" in block 19.

A7.2.8.1. Check item 20 in all cases where item 19 does not apply.

A7.2.9. The member's immediate commander signs the AF Form 348.

**A7.3. Staff Judge Advocate Instructions .** Enter the SJA concurrence for those cases where the immediate commander finalizes the "in line of duty" finding on AF Form 348, block 21, Oct 85 edition, or in the space underneath block 19, Nov 83 edition.

**A7.4. Appointing Authority Instructions (Reverse) .** Complete item 22 as outlined in paragraph [3.5](#).

**Attachment 8****APPOINTING INVESTIGATING OFFICERS**

**A8.1.** Appoint investigating officers either by letter or by special orders published according to AFI 37-128, *Administrative Orders* (formerly AFR 10-7). The appointing document will cite this instruction as authority, state the reason for the appointment, and designate a suspense date for submission of the investigating officer's report (usually 14 workdays from the date of the order). The appointing authority may extend the period of investigation.

**A8.2.** Investigating officers are disinterested officers in the grade of captain or above who are senior in date of rank to the member being investigated. The appointing authority prepares a memo justifying the appointment made for officers who do not meet these criteria. Place the memo with the appointing orders when they become a part of the investigative file.

**A8.3.** You should appoint one investigating officer to do all the investigations where determination of the LOD and misconduct status of more than one member affected by a single incident becomes necessary.

A8.3.1. Create separate investigative files on each subject.

**A8.4.** When an incident occurs at a location remote from the appointing authority, appoint an investigating officer from the installation nearest to where the incident occurred with the agreement of the commander concerned. Alternatively, the commander of the installation nearest to where the incident occurred may appoint the investigating officer, based on the request of the appointing authority. Reference the request in the appointing document. Encourage direct communication between the two commands.



**Attachment 9****INSTALLATION COMMANDER LETTER - DEATH NOT IN LINE OF DUTY**

A9. The installation commander letter to surviving dependents will contain the following information:

**A9.1.** That after full investigation into the facts and circumstances surrounding the member's death, the investigation determined a finding of "not in line of duty".

**A9.2.** That pursuant to Title 37 U.S.C., Section 403(l), "not in line of duty" findings eliminate the surviving beneficiaries' eligibility to receive the member's quarters allowance for an additional 90 days following death. If surviving dependents reside in military family housing, notification, include a statement that "not in line of duty" findings eliminate eligibility to reside in military family housing for 90 days without cost following the member's death. Also, include a statement that surviving dependents are indebted to the US government for reimbursement of BAQ expenses for that period of time in which they resided in military family housing since the member's death.

**A9.3.** That the finding of "not in line of duty" has no effect on other benefits or entitlements authorized to the surviving dependents.

**A9.4.** That they have the right to make written application requesting reinvestigation of the findings by the appointing authority within 7 days from the date of receipt of this letter; and

**A9.5.** That if they request a reinvestigation, the individual has the right to submit a statement and attach new and significant evidence not previously considered. Advise the individual to send the written application to the appointing authority.

**Attachment 10****PROCEDURES FOR REINVESTIGATION****A10.1.** The appointing authority:

A10.1.1. Gets the original report of investigation from the office named in paragraph 3.8.5.2.

A10.1.2. Gives all documentation to the original investigating officer with the direction to reinvestigate.

A10.1.2.1. Appoints a new investigating officer, if necessary.

A10.1.3. Advises AFMPC Disability Retirements Branch (DPMADS) that the case is being reinvestigated.

**A10.2.** All parties investigate and process the case according to paragraphs 3.7.1 thru 3.9, except:

A10.2.1. Record action of the appointing, reviewing, and approving authorities on letterhead stationary.

**A10.3.** The approving authority:

A10.3.1. Takes final action on the reinvestigation.

A10.3.2. Disposes of documentation according to paragraph 3.8.5.2.

**A10.4.** MPF/MSPPA:**A10.4. (AFRC)** MPF/MSPPA: For USAFR members, MPF/DPMPE.

A10.4.1. Disposes of documentation according to paragraph 3.10. after reaffirming the first finding.

A10.4.2. Corrects previous record entries when final action on reinvestigation is to change a finding.